

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO
3
4

UNITED STATES OF AMERICA,

Plaintiff,

v.

\$75,000 in U.S. CURRENCY representing
25 Puerto Rican lottery tickets,

Defendant.

Civil No. 3:14-cv-01822 (JAF)

5
6 **ORDER**

7 **I.**

8 **Introduction**

9 This matter is before the court on the Government's amended motion to strike
10 Robinson Bastardo's verified statement of claim. (Docket No. 20.) Claimant Bastardo
11 responded in opposition. (Docket No. 28.) Upon review of the briefs and case law, the
12 court finds the Government's motion well-taken. Claimant Robinson Bastardo's claim is
13 hereby STRICKEN.

14 **II.**

15 **Facts and Procedural History**

16 On August 5, 2014, U.S. Customs and Border Protection Officers inspected
17 passengers arriving at the Luis Muñoz Marín International Airport in Carolina, Puerto
18 Rico, from Santo Domingo, Dominican Republic. Passenger Manuela Aurora Bastardo-
19 Guzmán ("Ms. Bastardo") declared that she had arrived in Puerto Rico from the
20 Dominican Republic for the purpose of redeeming Puerto Rican lottery tickets she carried
21 on behalf of her brother Robinson Bastardo-Guzmán ("Claimant Bastardo"). Upon

1 interviewing Ms. Bastardo, HSI San Juan Special Agents seized from her twenty-five
2 Puerto Rico traditional lottery tickets pursuant to Title 19, United States Code, Section
3 1305.

4 On November 13, 2014, Plaintiff United States of America (the “Government”)
5 filed a verified complaint for forfeiture *in rem* against the Defendant, \$75,000 in United
6 States currency representing 25 Puerto Rican lottery tickets. The Government sent service
7 of process to potential claimants Manuela Bastardo and Robinson Bastardo on
8 November 19, 2014, and executed service on December 4, 2014, and December 15, 2014,
9 respectively. The Government published notice of the seizure of the lottery tickets for
10 thirty consecutive days, from November 19, 2014, through December 18, 2014, allowing
11 any person having a claim in the Defendant currency to state the same before the court.

12 On January 22, 2015, Claimant Bastardo filed a Verified Statement of Claim
13 signed by his sister, Manuela Aurora Bastardo-Guzmán (Docket No. 14). The
14 Government moved to strike Claimant Bastardo’s claim for lack of standing and
15 ownership pursuant to Rule G(8)(c)(i)(A) and G(8)(c)(i)(B) of the Supplemental Rules
16 for Admiralty or Maritime Claims and Asset Forfeiture Actions. (Docket Nos. 16 and
17 20.) The Government also moved for a default decree of forfeiture. (Docket No. 19.)

18 Claimant Bastardo first attempted to answer the Verified Complaint on
19 February 22, 2015. (Docket No. 21.) This initial attempt does not include Bastardo’s
20 signature and is signed only by his attorney, along with a verified statement from
21 Ms. Bastardo. (Docket No. 21.) During a Pretrial Conference held on February 23,
22 2015, the court advised that since Claimant Bastardo had signed neither the initial answer

1 nor the verified claim, both were invalid. The court then granted Claimant Bastardo until
2 March 10, 2015, to respond to the Government's motion to strike. (Docket No. 23.)

3 On March 10, 2015, Bastardo moved to file an amended verified claim that
4 included his signature (Docket No. 25), and requested a three-day extension to respond in
5 opposition to the Government's motion to strike (Docket No. 26). Despite the court's
6 extension through March 13, 2015 (Docket No. 27), Claimant Bastardo responded in
7 opposition on March 14, 2015, a day late. (Docket No. 28.)

8 Accordingly, the matter is fully briefed and ripe for review.

9 **III.**

10 **Law and Analysis**

11 The Government moves pursuant to Rule G(8)(c)(i)(B) of the Supplemental Rules
12 for Admiralty or Maritime Claims and Asset Forfeiture Actions to strike Claimant
13 Bastardo's verified statement of claim. (Docket No. 20.) Rule G(8)(c)(i)(B) allows the
14 government to move to strike a claim for lack of standing. In response to a motion to
15 strike a claim, the burden is on the claimant to establish standing by a preponderance of
16 the evidence. Rule G(8)(c)(ii)(B); *United States v. \$8,440,190.00 in U.S. Currency*, 719
17 F.3d 49, 57 (1st Cir. 2013). "To demonstrate standing, the claimant must start by
18 demonstrating an ownership or possessory interest in the seized property." *U.S. v.*
19 *\$8,440,190.00 in U.S. Currency*, 719 F.3d at 57 (citation omitted). "Courts generally do
20 not deny standing to a claimant who is either the colorable owner of the property or who
21 has any colorable possessory interest in it." *Id.* (citation omitted).

1 Claimant Bastardo cannot demonstrate an ownership interest in the seized
2 property. The Government seized the lottery tickets pursuant to 19 U.S.C. §1305(a),
3 which provides that:

4 All persons are prohibited from importing into the United
5 States from any foreign country ... any lottery ticket, or any
6 printed paper that may be used as a lottery ticket, or any
7 advertisement of any lottery. No such articles whether
8 imported separately or contained in packages with other
9 goods entitled to entry, shall be admitted to entry; and all
10 such articles and, unless it appears to the satisfaction of the
11 appropriate customs officer that the obscene or other
12 prohibited articles contained in the package were enclosed
13 therein without the knowledge or consent of the importer,
14 owner, agent, or consignee, the entire contents of the package
15 in which such articles are contained, shall be subject to
16 seizure and forfeiture as hereinafter provided[.]

17
18 The Government argues that the defendant lottery tickets were not allowed to be brought
19 into the United States from the Dominican Republic – or any foreign country, that
20 Ms. Bastardo’s attempt to bring the lottery tickets into Puerto Rico violated federal law,
21 and that the lottery tickets are contraband and, therefore, subject to forfeiture.

22 Ms. Bastardo arrived in Puerto Rico off a plane from the Dominican Republic, a
23 foreign country,¹ for the purpose of obtaining payment on the lottery tickets.
24 Ms. Bastardo admitted this to the agents who questioned her and has never contradicted
25 her statement. Claimant Bastardo does not dispute these facts.

26 Because the lottery tickets could not legally enter the United States, “a cognizable
27 property interest never materialized.” *See United States v. Two Mitsubishi Pick-up*
28 *Trucks*, 396 F.Supp.2d 117, 121 (D. Puerto Rico Oct. 24, 2005) (citing 18 U.S.C.

¹ There is no dispute that the Dominican Republic is a foreign country.

1 § 983(d)(4) (“[N]o person may assert an ownership interest under this subsection in
2 contraband or other property that it is illegal to possess.”). and *United States v.*
3 *Approximately 600 Sacks of Green Coffee Beans*, 381 F.Supp.2d 57, 62 (D.P.R. 2005)
4 (Coffee beans illegally imported into Puerto Rico were contraband and subject to
5 forfeiture.).

6 Claimant Bastardo’s remaining argument² is that Ms. Bastardo was not
7 “importing” the lottery tickets, and, therefore, the statute does not apply. “The starting
8 point in statutory interpretation is the language of the statute itself.” *United States v.*
9 *Ramirez-Ferrer*, 1995 WL 237041, *15 (1st Cir. 1995) (internal quotation marks omitted)
10 (citing *United States v. James*, 478 U.S. 597, 604 (1986)). Here, 19 U.S.C. § 1305 does
11 not define “import.” Claimant Bastardo argues that “importation” means “the act of
12 bringing something into a country to be sold.” (Docket No. 28 at 4, citing Webster’s
13 Dictionary without appropriate citation.)

14 To interpret the term “import” as prohibiting only lottery tickets for sale or
15 commercial purpose is contrary to the purpose of the statute and Supreme Court case law.
16 See *United States v. Thirty-Seven (37) Photographs*, 402 U.S. 363, 375-376 (1971)
17 (Importation of obscene materials’ statute, 19 U.S.C. 1305(a), applies to one seeking to
18 bring materials into the U.S. whether for personal use or public distribution.). Puerto
19 Rico traditional lottery tickets have been for years an instrument for money laundering.
20 These tickets are for sale in Puerto Rico only, yet they make their way to the states and
21 even into foreign countries. Throughout the years, we have seen instances of sale of

² In fact, Claimant Bastardo’s attorney made this argument during the hearing held on February 23, 2015, and again in his response brief. (See Docket No. 28 at 3-4.)

1 prized tickets to foreign markets at a premium. When cashed in Puerto Rico, the prize is
2 tax free. The court has no evidence that this is the case here, but the fact remains that this
3 case fits the fact pattern.

4 The term “import” in § 1305 includes the act of bringing Puerto Rico lottery
5 tickets into Puerto Rico from a foreign country by any person. The court’s interpretation
6 is supported by other cases similarly involving the attempt to bring lottery tickets into
7 Puerto Rico. In *Couvertier v. Bonar*, the First Circuit determined that Section 1305
8 applies to Puerto Rico lottery tickets brought into Puerto Rico to be redeemed. 173 F.3d
9 450, 453 (1st Cir. 1999); *see also United States v. Fourteen Thousand Eight Hundred and*
10 *Seventy-Six Pieces of Puerto Rico Lottery Tickets*, 791 F.Supp. 345 (D.P.R. 1992)
11 (involving the importation of lottery tickets from St. Maarten to Puerto Rico for the
12 purpose of collecting the prize value of the tickets).

13 The First Circuit previously declared that 19 U.S.C. § 1305 applies to all lottery
14 tickets, regardless of whether the tickets are prized or non-prized. *Couvertier*, 173 F.3d
15 at 453 (*emphasis added*). Claimant Bastardo, a Dominican residing in Tortola, British
16 Virgin Islands, purchased the lottery tickets in Barbados. He then asked his sister to
17 transport the tickets from the Dominican Republic to Puerto Rico to collect the prizes
18 associated with the tickets. Because Ms. Bastardo attempted to bring the lottery tickets
19 into Puerto Rico from the Dominican Republic, the lottery tickets could not legally enter
20 the United States and are, thus, forfeitable.

21 Moreover, Claimant Bastardo cannot take shelter with the innocent-owner defense
22 in 18 U.S.C. § 983(d) as it does not apply to property that is in itself illegal. *See* 18

1 U.S.C. § 983(i); *and see U.S. v. Two Mitsubishi Pick-up Trucks*, 396 F.Supp.2d at 121;
2 *U.S. v. Approximately 600 Sacks of Green Coffee Beans*, 381 F.Supp.2d at 62. The court
3 notes that this is not a case in which an individual purchased lottery tickets while in
4 Puerto Rico, flew to another country for a vacation, and realized once he had left the
5 country that he had Puerto Rico lottery tickets in his pocket. Claimant Bastardo makes
6 no such assertion. In fact, Claimant Bastardo does not dispute that he purchased the
7 tickets outside of Puerto Rico and then requested that Ms. Bastardo enter the United
8 States with the lottery tickets for the sole purpose of claiming the prized value of the
9 tickets on his behalf.

10 Accordingly, Claimant Robinson Bastardo cannot demonstrate an ownership
11 interest in lottery tickets and lacks standing to assert a claim against the Defendant
12 property. Pursuant to Supplemental Rule for Admiralty or Maritime Claims and Asset
13 Forfeiture Actions G(8)(c)(i)(B), the Government's motion to strike Robinson Bastardo
14 Guzman's claim is hereby GRANTED.

15 The Government also moves to strike Claimant Bastardo's claim pursuant to Rule
16 G (8)(c)(i)(A) for failing to properly verify his claim and for failing to timely file an
17 answer or verified claim. Claimant Bastardo moved to file an amended verified claim in
18 an effort to fix the invalid claim made on Defendant Property. (Docket No. 25.)
19 However, neither Claimant Bastardo's amended claim nor his answer can correct the
20 standing issue addressed above. Accordingly, Claimant Bastardo's motion to file an
21 amended verified claim is denied. Having found that Claimant Bastardo lacks standing to

1 assert a claim over the Defendant Property, the court need not decide the Government's
2 motion pursuant to Rule G (8)(c)(i)(A).

3 **IV.**

4 **Conclusion**

5 Accordingly, for the aforementioned reasons, the government's motion (Docket
6 No. 20) is **GRANTED**, and Claimant Bastardo's claim for the Defendant Property
7 (Docket No. 14) is hereby **STRICKEN**. Claimant Robinson Bastardo's motion to amend
8 his verified claim (Docket No. 25) is **DENIED**.

9 **IT IS SO ORDERED.**

10 San Juan, Puerto Rico, this 7th day of April, 2015.

11 S/José Antonio Fusté
12 JOSE ANTONIO FUSTE
13 U. S. DISTRICT JUDGE